

No. 18-1444

In The
Supreme Court of the United States

WILSON J. SOTO NIEVES,
MARITZA G. RIVERA, et al.,

Petitioners,

v.

DEPARTMENT OF THE FAMILY OF THE
COMMONWEALTH OF PR, et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The Supreme Court Of Puerto Rico**

PETITION FOR REHEARING

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Pursuant to Rule 44.2, Petitioners Wilson J. Soto Nieves, Maritza G. Rivera, et al., respectfully petition for rehearing of the Court’s order denying certiorari in this case.

GROUNDS FOR REHEARING

Rule 44.2 of the Rules of the Supreme Court allows the filing of a petition for rehearing limited to “ . . . intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.” Petitioners respectfully understand there are substantial grounds not previously presented that warrant granting the instant petition.

In the petition for certiorari, Petitioners argued that they had been deprived of their liberty interests in not being allowed, by the Courts of the Commonwealth of Puerto Rico, the possibility of contesting the underlying grounds upon which an administrative agency determined that they did not have a right to obtain certain information.

No contest of the agency’s determination was allowed because the underlying grounds were deemed to be confidential information by the mere action of placing a label (Without Grounds). A unilateral action by the agency that excluded another label (“Unfounded”) that would have meant the information was provided in bad faith, therefore, not protected by a mantle of

confidentiality as expressly stated in the controlling statute¹.

The Court of Appeals of the Commonwealth of Puerto Rico issued a determination to confirm the administrative agency's decision and such decision was allowed to stand by the Supreme Court of Puerto Rico. Petitioners understand that in addition to the arguments presented in the petition for certiorari there are other substantial grounds not previously presented to support the review by this Honorable Court.

In the instant case, as the respondents can readily ascertain since they interviewed the Petitioners, investigated their circumstances and have control of the undisclosed record, the child that was the reason for the filing of the negligence complaint against his parents is a child with severe autism, a condition requiring enormous amounts of time and dedication by their parents to allow the child to make, at least, some progress or even to just lessen the daily challenges facing him, particularly since the services received from the various government agencies have not been appropriate. Petitioners respectfully understand that consideration of the due process violation of the liberty interest of the parents in the instant case by an agency of the Commonwealth of Puerto Rico, and the excessive deference the Commonwealth's Court system gave the agency's action by dismissing controlling law (local and U.S. Constitutional law) in adjudicating the controversy,

¹ 8 L.P.R.A. (Laws of Puerto Rico Annotated) §§ 1131, 1135.

should be seen in a different light due to the particular circumstances of the child as discussed below.

Filing a negligence complaint against the parents of a child *without* disabilities certainly has deleterious effects and the parents' inability to obtain redress as allowed under the applicable laws is equally deserving of a remedy that should be dispensed by the local courts in the ordinary course of business, see *Humphries v. County of L.A.*, 547 F.3d 1117 (9th Cir. 2007). However, in the case at hand, in which the subjects of the negligence complaint are the parents of a child *with* autism, the situation is entirely different because the consequences of the mere filing of the complaint, even if unfounded, are much more severe. Due to the intrinsically close and strong dependency-based relationship between a child with severe autism and their parents (a lifelong relationship in most cases), a negligence complaint assumes an importance and effect that is hard to fathom. A false negligence complaint brings immediately unimaginable anguish, fear or even terror in the hearts of devoted parents that then confront, not only the intrusion in their private lives of the government (an intrusion that would have been justified if based on actual true facts), but the fear of losing custody of their child, or being subject to all sort of limitations in their future actions in regard to taking care of their child and, probably less urgent, but still important, the stigma of having been accused of neglect which can follow a person even after the accusation is deemed groundless. This consequence strongly enhances the private interest affected by the government

action, one of the key elements for a procedural due process violation, see *Mathews v. Eldridge*, 424 U.S. 319, 332-333 (1976).

But another, even more important element in cases of responsible parents with severely disabled children, particularly children with severe autism, is that a complaint of neglect is likely filed by persons who are close to them or that closely interact with them; like family members, school personnel, personnel at doctors' offices or therapists and support staff since these are generally the persons with whom the child and their parents spend most of their time outside the intimacy of the home.

These persons are not strangers, but persons whose interactions with the child are dictated by (other than family members) their professions. Those interactions can run the gamut from harmonious to contentious since responsible parents of children with severe forms of autism often have to continuously defend the right of their children to appropriate care, particularly when services provided do not meet the standard of care appropriate to the needs of the child. An unfounded accusation of neglect, be it to punish a parent deemed too demanding or to attempt to exert control, not only is a breach of the necessary bond of trust with the persons with whom parents share the responsibility to care for their children, it violates the professional obligations of the various professional caregivers and disrupts the already difficult life of the parents of a severely autistic child.

Due to the continued need of the parents of an autistic child to receive services from various caregivers, the inability to have available the only tool offered by the applicable statute to protect themselves from false accusations from anyone², but particularly the very same caregivers with whom they interact daily, will render them hostages to them. This will significantly diminish the parents ability to defend their children and demand that appropriate services be provided by fear of becoming the subject of a complaint for neglect or mistreatment, that will disrupt their lives even if the complaint is found to be Without Grounds (which means that a finding that the complaint was based on unsubstantiated or false information *was not made*).

The perpetrator will probably rest assured in the unfounded belief that no permanent damage will ensue since the complaint will, probably, be eventually dismissed (since it was based on false information), and that he/she, under cover of confidentiality, will continue to wield a weapon to covertly discipline parents who are too forthcoming in defending their child's interests and needs. Needs, that might be contrary to what the professional caregiver finds expedient to

² That the statute, as an exception withholds the requirement of strict confidentiality "... in cases of unsubstantiated reports in which false information has been knowingly provided." Only information provided in good faith "... may not be used against him/her/it [persons or institutions required to provide information, which according to the statute is 'all persons'] in any civil or criminal proceedings that may be initiated as a result of said action." Article 21 of Act 246 of December 16, 2011, 8 L.P.R.A. (Laws of Puerto Rico Annotated) § 1131.

facilitate his/her work and the immediate needs of his/her employer. This, however, obviates the significant damage that even an unfounded complaint causes to parents in dire need of government services, and obviates that the applicable statutes should not be abused to benefit private interests.

If the Commonwealth Courts' decision is allowed to stand, a chilling effect will be cast in the parents and other persons in charge of children with severe autism and other severe forms of disability that, contrary to persons in charge of non-disabled children, depend on third parties to ensure the continued wellbeing of their children. This result is only possible because the Courts of the Commonwealth of Puerto Rico prioritized the policy position of having "... the incidents of mistreatment to minors to be reported by the citizens without fear of reprisals," (App. 10) while dismissing the clear text of the statute that makes an exception to confidentiality when the information provided is false information provided knowingly. Doing so, not only violates the rights of all persons that might be subject to complaints of negligence or mistreatment, but puts the parents or persons in charge of disabled children, particularly those with severe autism, in a terrifying situation, unable to protect themselves from any number of caregivers or other persons with whom they are required to interact in a continuous manner, afraid that a false anonymous negligence complaint will disrupt their lives if they are too forthcoming in protecting their child interest and wellbeing.

Arguably, the agency could make the right choice in determining that certain information was provided in good or bad faith; however, due process cannot rest on the unilateral unreviewable will of a functionary of an agency, see *id.* at 346, which probably is overworked and could err on the side of not creating more work for himself, since a determination of existence of bad faith can lead to requests that the relevant information be provided, that he/she be called to testify, and that the determination could be against other government agents or contractors employed by the government or even the same agency that employs him/her. This is particularly so with respect to parents of severe autism, most of whom will be extremely dependent on government services directly or indirectly in a continuous basis.

The Courts of the Commonwealth of Puerto Rico could have prevented this result by following the applicable statutes and the due process requirements that posit that the administrative decision must be based on the administrative record.

Should it stand, the Court of Appeals' decision, will in effect delegate to the agency the final, unreviewable, say on the determination that a complaint was submitted Without Grounds instead of Unfounded (that there was no finding of bad faith or false information provided knowingly). In addition to the possibility of an erroneous determination remaining uncorrected, such granting of power to the agency will allow the agency to continue its policy of promoting the reports of incidents of mistreatments without fear of

reprisals, as the Court of Appeals concluded, without such promotion being subject to the caveat that the information provided must not be false information provided knowingly, a caveat that could undercut the main message. A message, however, that is not only contrary to the plain text of the statue but that allows the abuse of the law by unscrupulous persons who could use it as a convenient covert weapon to discourage or control persons who greatly depend on multiple providers of services by the government and its contractors, such as parents of children with severe disabilities, such as autism.

Such weapon is much more effective against such persons, than against persons without the responsibility of caring for disabled children. For this last group a dismissal of a negligence or mistreatment complaint could be vindication enough since their interactions with third parties in dealing with their children is likely less extensive and, also, less involved, as their child is probably one among many children in school and services with other professionals such as medical doctors or therapist is not a daily endeavor.

For parents or caretakers of disabled children a dismissal of a negligence complaint is not enough, such dismissal, without an opportunity to verify if there was good or bad faith by the person who filed it, is just evidence that anyone of the multitude of persons, specialists, assistants and professionals with whom they are obligated to interact daily, can act in the same way against them promoting chaos in their family life, without any recourse other than the will of some

functionary that as described above, could err, seek to create less work for himself or the agency, or abide by the stated policy of promoting the report of incidents of mistreatment³, thus disregarding incidents of false information. Although, this is to some extent speculative, given the human condition it is a likely outcome, particularly if the functionary knows that no review of his/her determination will take place by a Court of Law.

Therefore, the position of the parents of children with severe autism in Puerto Rico *is now worse* after the decision of the Court of Appeals and the Supreme Court of Puerto Rico refusal to review it, since the agency now knows the Courts of the Commonwealth of Puerto Rico have decided that the part of Act 246, the controlling statute, that expressly states that information based on “unsubstantiated reports in which false information has been knowingly provided” is not confidential, is only enforceable if they (the agency) make a determination that it is so. A contrary determination is not subject to judicial review and no evidence to sustain the same needs to be provided. In view of the factors described above, it is likely that the exception to the confidentiality requirement will not be enforced, as is clearly suggested in the judgment of the Court of Appeals.

³ See App. 10 where the Court of Appeals stated: “. . . , the legitimacy of the claim for the confidentiality of the State is not in discussion, especially when the same aspires to have the incidents of mistreatment to minors to be reported by the citizens without fear of reprisals.”

This Honorable Court's decision not to review the Commonwealth Courts' judgment should be reconsidered since the application of the judgment to parents of children with severe autism and other related disabilities considerably enhances the negative consequences of the Commonwealth Courts' failure to abide by the text of the statute and due process demands in denying the liberty interests claimed by the Petitioners.

Local Courts should, in the ordinary course of proceedings, abide and implement the constitutional restraints that are at the core of the system of governance as required by the U.S. Constitution, particularly due process constraints. When they fail to do so the consequences can vary. In the instant case Petitioners understand that this Honorable Court's intervention is warranted, not only because of the constitutional violations allowed by the Courts of the Commonwealth of Puerto Rico as described in the petition for certiorari, but because the consequences are particularly grievous to a specific subset of the population, parents with children with severe autism and other severely disabled, that largely depend on third parties to provide needed services for their children.

This subset of the population (parents of children with severe autism) is not limited to the Commonwealth of Puerto Rico, but extends throughout the entire nation. A determination that a complaint is Without Grounds can be remedy enough for most people, but it is little consolation to the victims subject to persons that weaponized the laws to, covertly, attempt to manipulate or punish people dependent on them for

services as described above, especially when required services are not provided prompting the parents to demand them. That should not be allowed. This Honorable Court cannot require the lower courts to apply the law in one way for one subset of the population (parents of children with severe autism) and in a different way to another group where the law itself does not make such distinction. However, this Honorable Court should require the Courts of the Commonwealth of Puerto Rico, and in any other jurisdiction with similar laws, to uniformly apply clearly stated due process requirements to protect the liberty interest of all parties subject to the controlling law, in that way protecting the subset of people (parents of disabled children, including those with severe autism) that would otherwise be left without recourse and even in worse position if the determination of the Commonwealth Courts is allowed to stand since *the mere dismissal of negligence complaint is not enough to vindicate the due process violations and the damage incurred by false claims of neglect or mistreatment as described above*. A damage that that will likely continue, now even more so, if the perpetrator is not subjected to remedies allowed by law, thus permitted to abuse the system. This is the result allowed by permitting the agency to be the sole judge to deny the remedies included in the law by withholding the information that would allow discernment and, if applicable, review of said administrative decisions to protect persons that due to their child's autism, or other severe disabilities, are at the mercy of third parties, particularly government agents.

CONCLUSION

For the reasons discussed before the petition for rehearing should be granted.

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CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

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